

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DENNIS DONNELL JONES,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-04-1544-F
)	
MIKE MULLIN, Warden,)	
)	
Respondent.)	

ORDER

On April 28, 2005, United States Magistrate Judge Gary M. Purcell entered a Report and Recommendation, wherein he recommended that respondent's motion to dismiss be denied, that petitioner's motion to dismiss and/or stay be denied, and that petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied. In accordance with the court's order of June 17, 2005, petitioner timely filed his objection to the Report and Recommendation on June 27, 2005.

The court notes that petitioner has not challenged the Report and Recommendation as to its recommended resolution of the parties' motions to dismiss and/or its recommended disposition of grounds one and three of petitioner's habeas corpus petition. The court therefore deems appellate review of the factual and legal issues contained in the Report and Recommendation as to those matters waived. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

However, petitioner has challenged the recommended disposition of ground two of the habeas corpus petition, namely, that the trial court erred in refusing petitioner's request for a jury instruction concerning Oklahoma's law on parole eligibility. Having conducted a *de novo* review of the issue in accordance with 28 U.S.C. § 636(b)(1), the court concurs with Magistrate Judge Purcell's analysis and

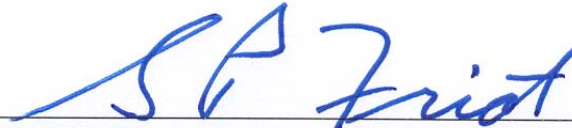
recommendation as to ground two. The court agrees that petitioner is not entitled to habeas relief concerning the omitted jury instruction claim. The court accepts, adopts and affirms the Report and Recommendation in its entirety.

IT IS THEREFORE ORDERED that the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell on April 28, 2005 (docket entry no. 34), is **ACCEPTED, ADOPTED** and **AFFIRMED**.

IT IS ALSO ORDERED that Respondent's Motion to Dismiss for Failure to Exhaust Necessary State Remedies, filed December 17, 2004 (docket entry no. 10), and Petitioner's Motion to Dismiss Habeas Corpus Petition Without Prejudice and/or Motion to Stay Proceedings to Allow Petitioner The Opportunity to Exhaust State Court Remedies, filed March 15, 2005 (docket entry no. 21), are **DENIED**.

IT IS FURTHER ORDERED that Petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody, filed November 12, 2004 (docket entry no. 1), is **DENIED**. Judgment shall issued forthwith.

ENTERED this 28th day of June, 2005.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE